



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Claire Edward
3 Roseneath Villas
Military Road
St Lukes
Cork

17/06/2019

RE **Section 5 Declaration 3 Roseneath Villas,
Military Rd, Cork**

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise as follows:

Having regard to:

- The particulars received by the Planning Authority on 21/05/19
- Sections 2, 3, 4 and 82 (1) of the Planning and Development Act 2000 (as amended)
 - Class 1 of Schedule 2, Part 1 *Exempted Development- General of the Planning and Development Regulations 2001*(as amended)

the Planning Authority considers that —

the proposal IS DEVELOPMENT and that the development **IS EXEMPTED DEVELOPMENT**.

Yours Faithfully,

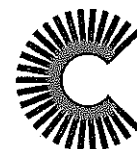
Paul Hartnett

Assistant Staff Officer

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT	
File Reference:	Ref. R517/19
Description:	<i>Is the construction of a kitchen extension development, and if so, is it exempted development?</i>
Applicant:	Claire Edward
Location:	No. 3 Roseneath Villas, Military Road, St. Lukes, Cork City.
SUMMARY OF RECOMMENDATION	
CONSTITUTES DEVELOPMENT AND IS EXEMPTED	

Purpose of Report

Under Section 5 (1) of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a Section 5 declaration are set out in the Act. In this report 'the Act' means the Planning and Development Act, 2000 as amended and 'the Regulations' means the Planning and Development Regulations, 2001 as amended, unless otherwise indicated.

Subject Development, and question before the Local Authority is:

Is the construction of a kitchen extension development, and if so, is it exempted development?

- **RELEVANT PLANNING HISTORY**

TP 07/32062

Permission granted to demolish wall and construct hard stand with entrance for parking at rear.

- **Planning and Development Act, 2000 as amended**

Section 2(1)

"exempted development" has the meaning specified in section 4.

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- *where the context so admits, includes the land on, in or under which the structure is situate, and*
- *in relation to a protected structure or proposed protected structure, includes—*
 - *the interior of the structure,*
 - *the land lying within the curtilage of the structure,*
 - *any other structures lying within that curtilage and their interiors, and*
 - *all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(2)

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- *any of the developments specified in subsection (1), or*
- *development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

Section 5(1)

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Section 82(1),

82.—(1) [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

• **ENVIRONMENTAL ASSESSMENT**

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- *authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- *as respects which an environmental impact assessment or an appropriate assessment is required,*

to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

- **Screening for Environmental Impact Assessment**

Pursuant to article 103(1) of the Planning and Development Regulations 2001 as amended, having regard to the nature and scale of the proposed development and following a preliminary examination of, at the least, the nature, size or location of the proposed development, it is considered that there is no real likelihood of significant effects on the environment and it is consequently concluded that EIA is not required.

- **Screening for Appropriate Assessment**

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required**.

- **Assessment**

Zoning and Development Objectives

The subject site is located at Military Road & has ZO4 Residential, Local Services and Institutional Uses zoning. The objective of this zoning is *'To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3.*

- **Site Description**

The subject property is a three storey red bricked dwelling which forms part of a significant terrace fronting at Roseneath Villas, and fronting onto Military Road, which is listed on the NIAH for its architectural interest.

- **Development**

The first issue for consideration is whether or not the matter at hand is *'development'*, which is defined in the Act as comprising two chief components: *'works'* and / or *'any material change in the use of any structures or other land'*. It is clear that the proposal constitutes *'works'*, which is defined in section 3(1) of the Act as including *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'*. As the proposal comprises *'works'*, **it is clearly therefore 'development' within the meaning of the Act.**

CONCLUSION

Is development

- **Exempted development**

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines *'exempted development'* as having *'the meaning specified in Section 4'* of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

The dwelling is not an un-authorised dwelling nor is its use. It is listed on the NIAH. The dwelling is not a protected structure and is not located in an architectural conservation zone. The proposed extensions are single storey, and entirely to the rear, and comprises of a dining area, lobby and WC/utility, all to existing rear kitchen area, with mono-pitch roofs.

There are 3 no. velux windows in total – 2 for the proposed Dining area and 1 over the proposed Lobby.

I consider that it falls within the following Class:

Development within the curtilage of a house

CLASS 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

Provided:

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

The total floor area of the proposal submitted under the Section 5 is stated as 20.8 sq.m. It is considered that the velux windows are located on the roofs of single storey extensions and does not result in any overlooking, therefore are not material, and the provision for above ground floor windows to be 11 metres from the boundary they face, does not apply.

There exists over 70 sq. m. of private rear garden remaining, which is well in excess of the 25 sq. m. criteria.

Thus, based on the above, the works are considered to be exempt.

Recommendation

Having regard to —

- The particulars received by the Planning Authority on 21/05/19
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Helen O' Sullivan 10/6/2019.

A.Planner

Agreed

Jwen Jordan McJee, -A/SP

12/06/2019

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Helen O' Sullivan 10/6/2019.

A.Planner

Comhairle Cathrach Chorcaí
Cork City Council

21 MAY 2019

Strategic Planning & Economic
Development Directorate

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate
Cork City Council, City Hall, Anglesea Street, Cork.

Post/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924564/4321
Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

3 ROSENEATH VILLAS

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Is the construction of a kitchen extension at No 3 Roseneath villas, Military Road, St Lucies, Cork development and if so, is it exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	Existing: 11.4 sqm / Proposed: 20.8 sqm
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) _____ _____ _____	Proposed/existing use (please circle) _____ _____ _____

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Claire Edward		
Applicants Address	No 3 Roseneath villas Military Road St Lukes		
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	Telephone:		
	Fax:		
	E-mail address:		
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

6. I / We confirm that the information contained in the application is true and accurate:

Signature: C. Edwards

Date: 13/05/19

.....

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.


DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution



SITE LOCATION MAP - Scale 1:500

No.3 Roseneath Villas
 Military Road - St Lukes
 17.05.2019

 Site Boundary

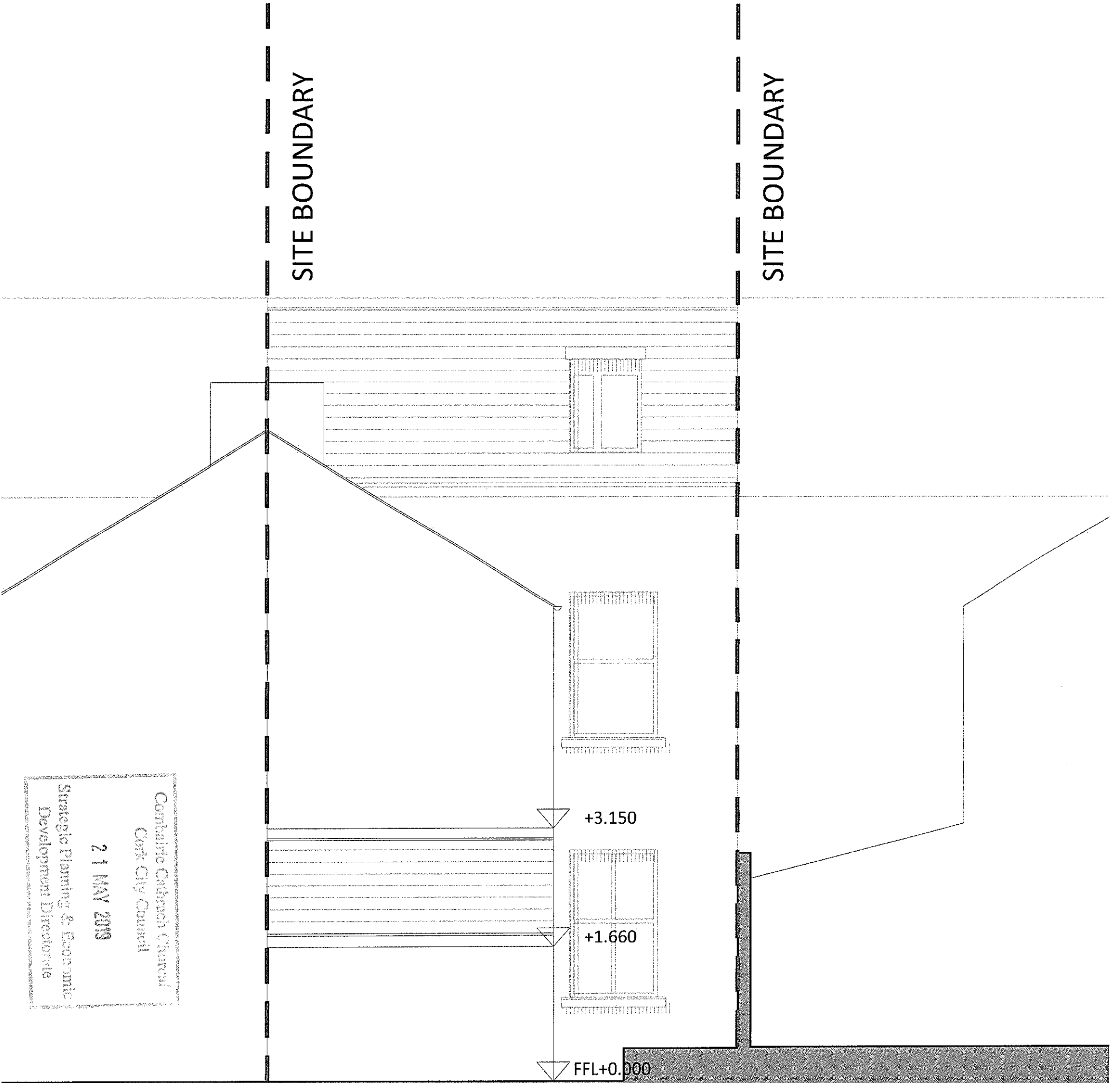


OS Map Ref: 6383-01
 Ordnance Survey Ireland License See Attached Copy of Receipt.

All levels (in meters) are related to main head datum.
 All dimensions in millimeters. Figured dimensions only are to be taken from this drawing.

SITE BOUNDARY

SITE BOUNDARY



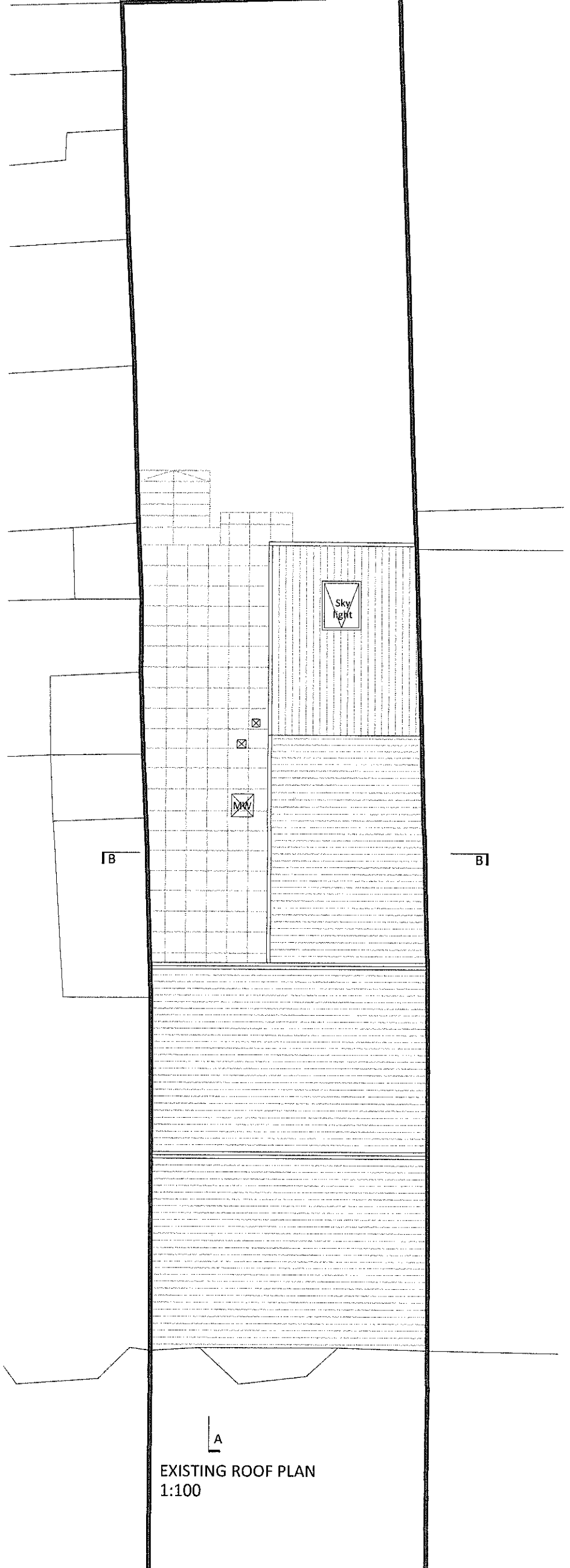
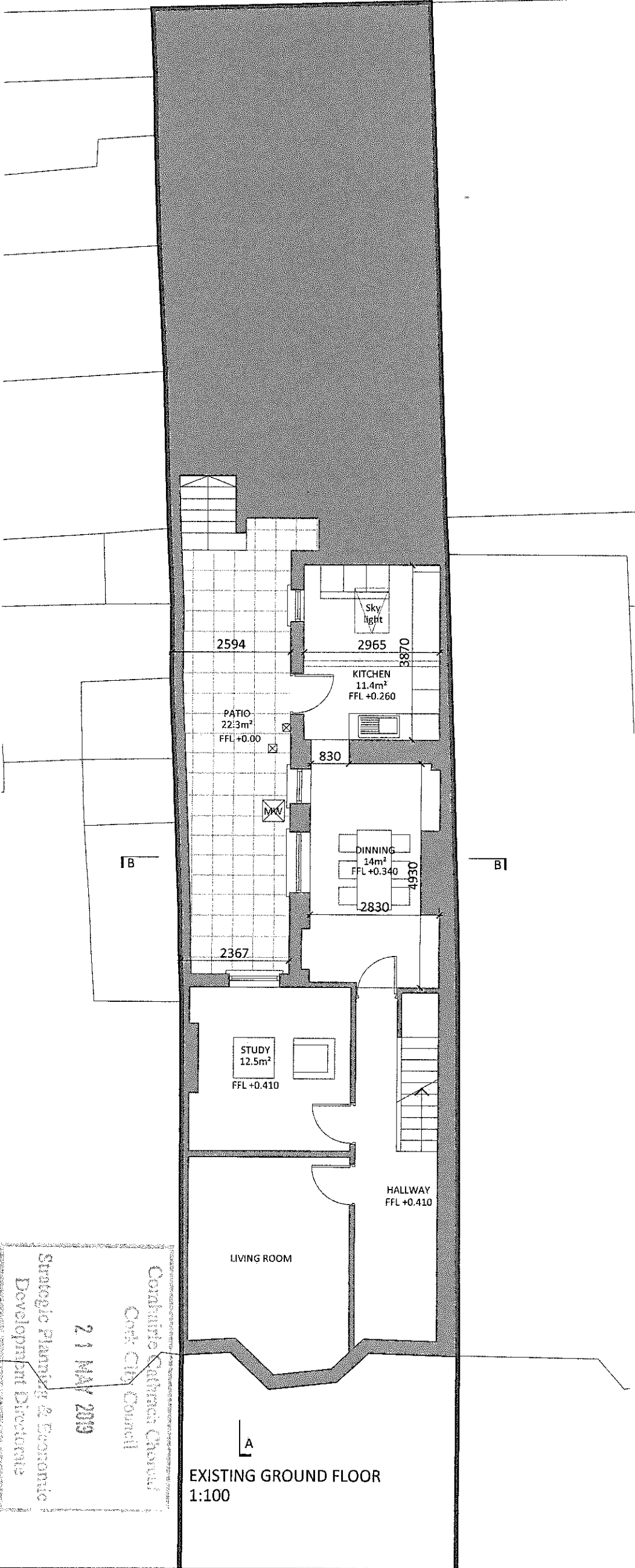
Corkhairfe Cathrach Chomairle
Cork City Council
21 MAY 2019
Strategic Planning & Economic
Development Directorate

NORTH ELEVATION
1:50

A

A

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EXISTING GROUND FLOOR
1:100

EXISTING ROOF PLAN
1:100

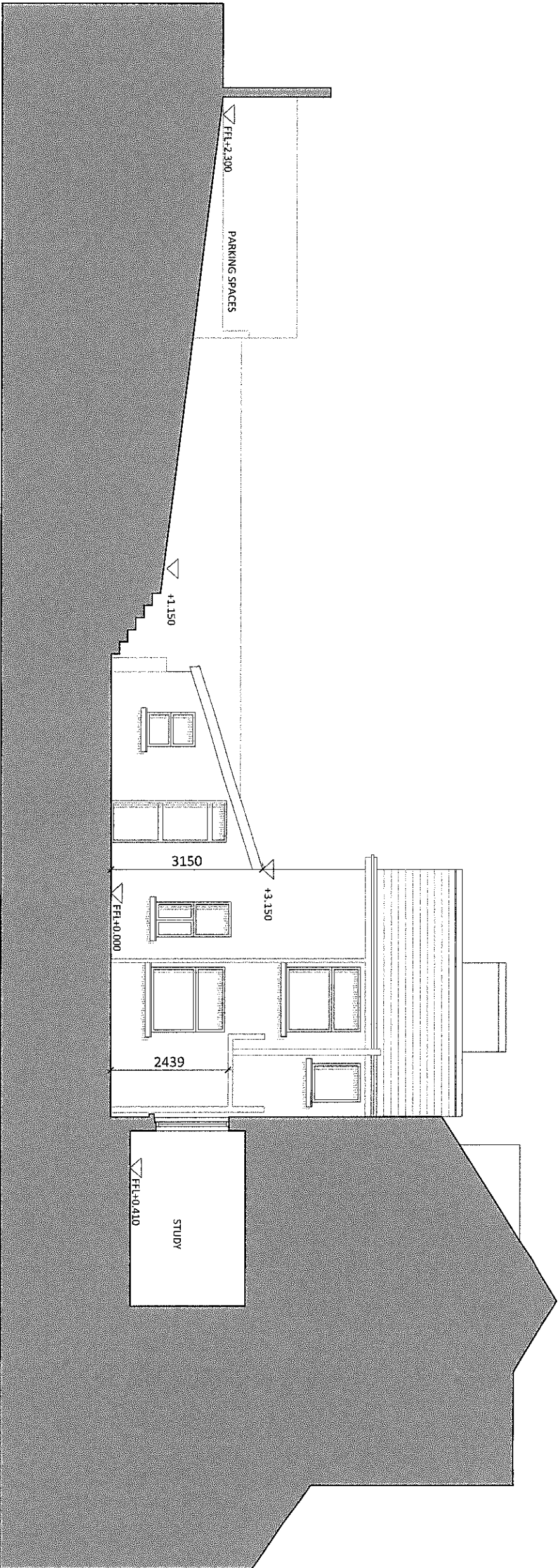
Cornsuirte Cathrach Chesham,
 Cork City Council
 21 MAY 2019
 Strategic Planning & Economic
 Development Directorate

Existing Ground Floor and Roof Plans- Scale1:100
 No.3 Roseneath Villas
 Military Road - St Lukes
 17.05.2019

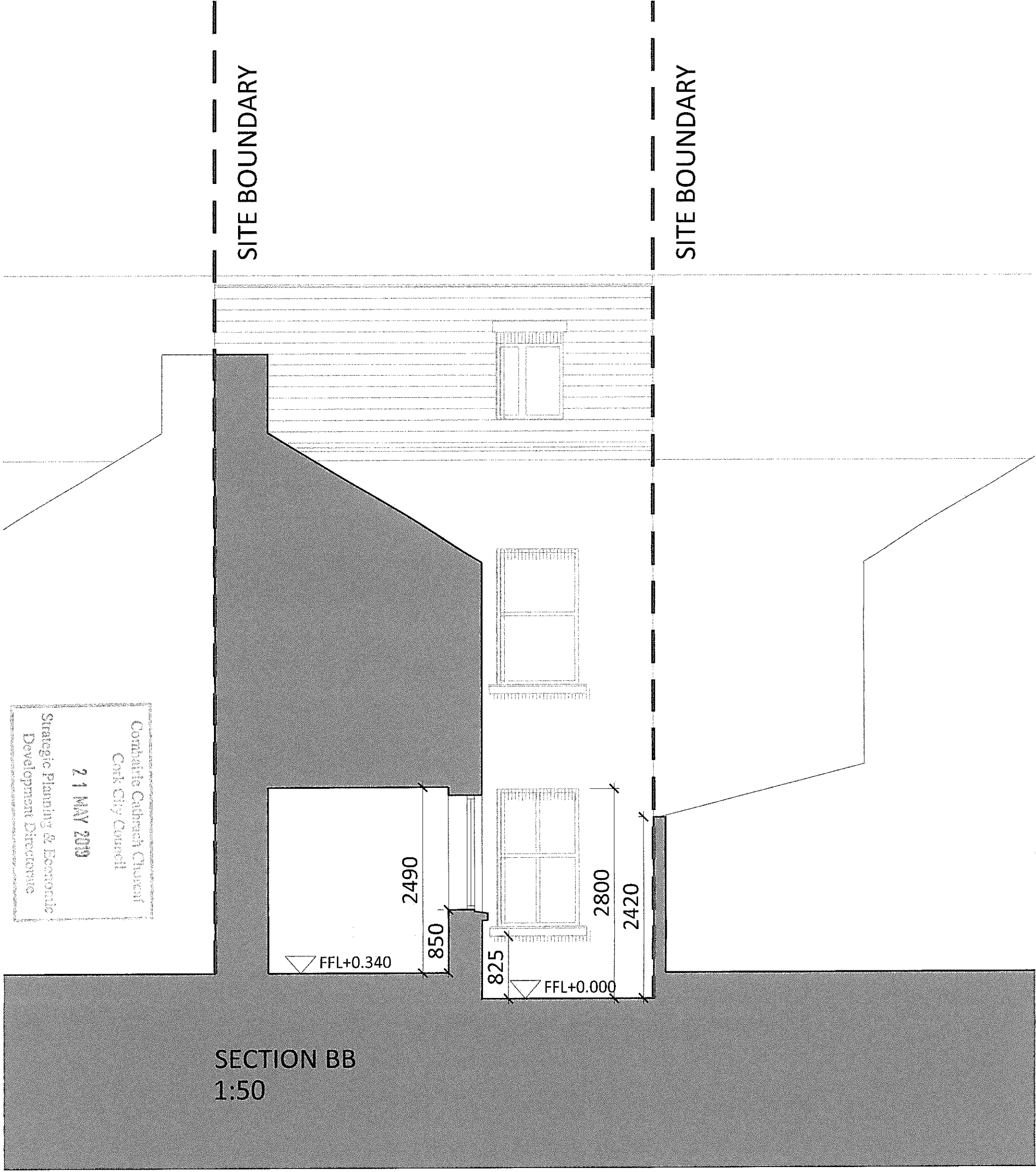
Site Boundary



SECTION AA
1:100



Consulting Architectural
Cork City Council
21 MAY 2019
Strategic Planning & Economic
Development Directorate

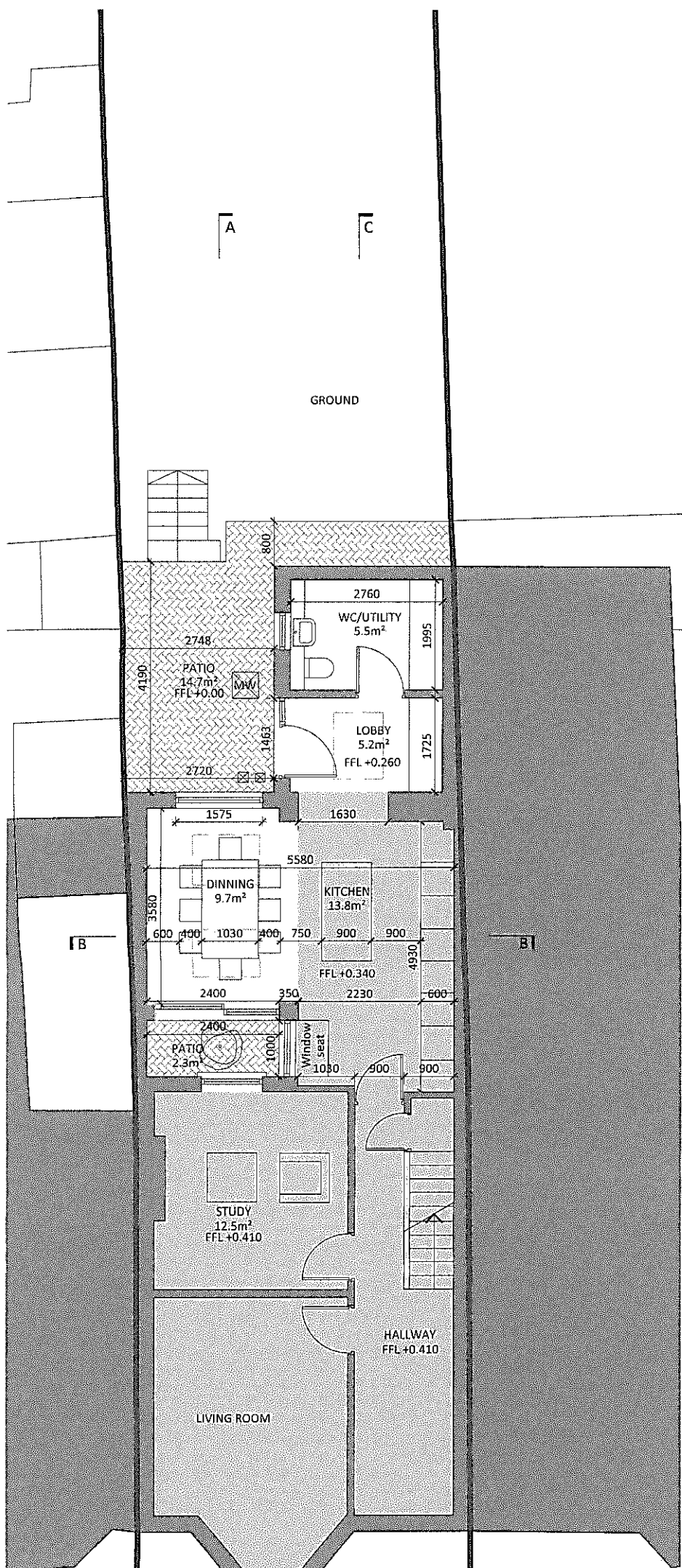


SITE BOUNDARY

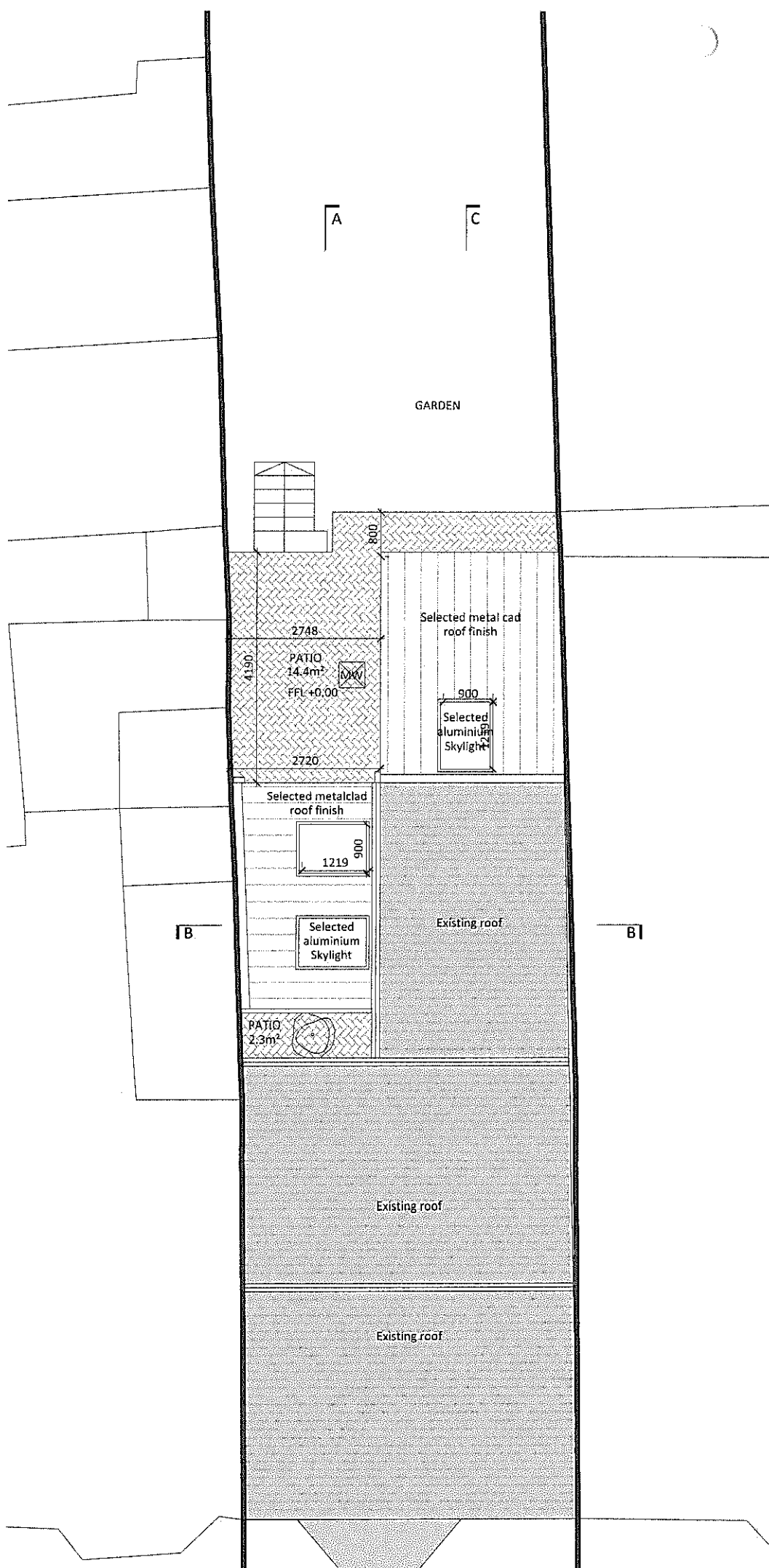
SITE BOUNDARY

Comhairle Cathrach Chorcaí
 Cork City Council
 21 MAY 2019
 Strategic Planning & Economic
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SECTION BB
 1:50



GROUND FLOOR
BACK OF THE HOUSE
1:100

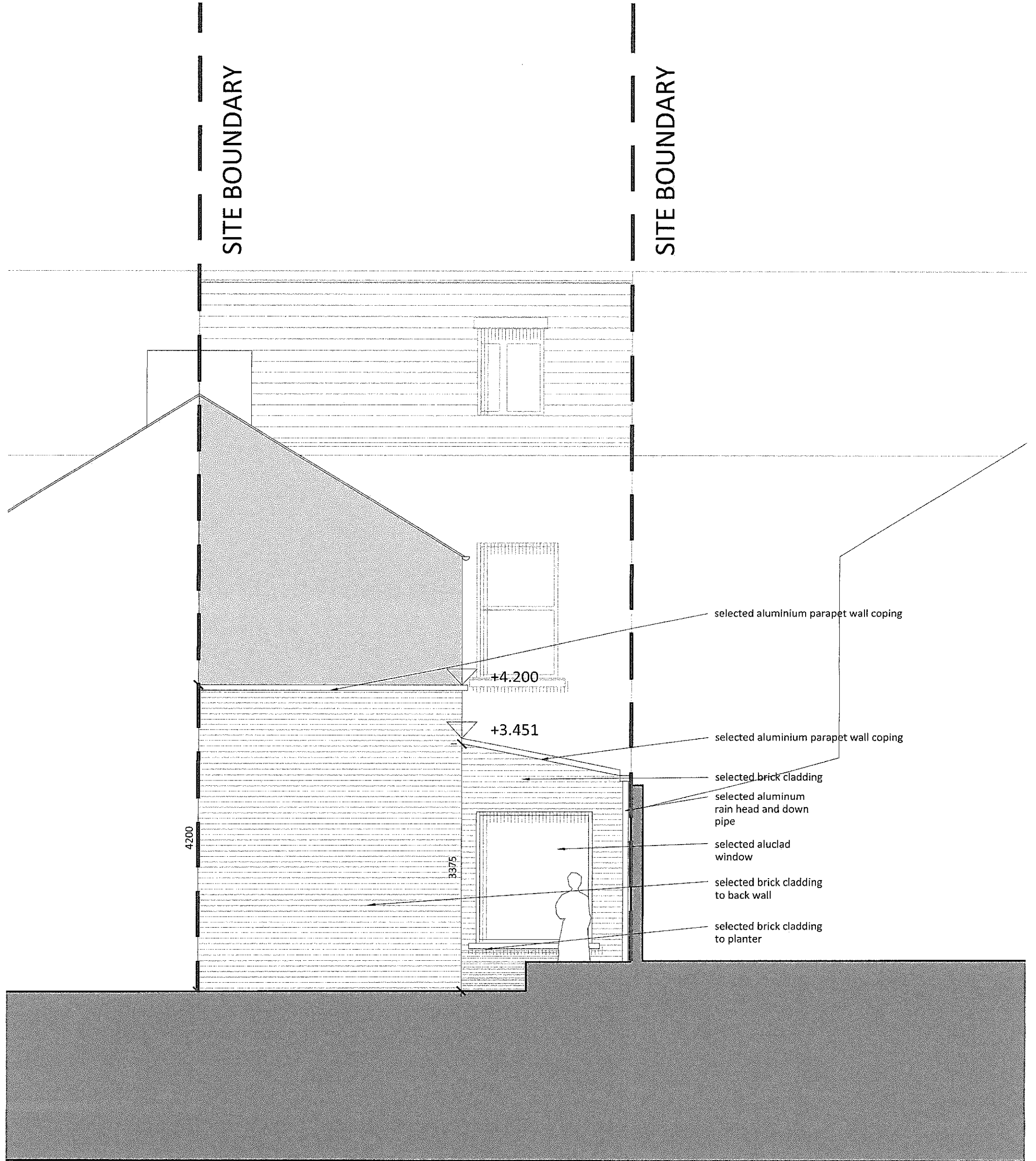


ROOF PLAN
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1:100

Combine Cahnrich Charous
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Proposed Ground Floor and Roof Plans- Scale 1:100
 No.3 Roseneath Villas
 Military Road - St Lukes
 17.05.2019
 Net Proposed Kitchen Extension : 20.8m²
 Site Boundary
 Existing Structure



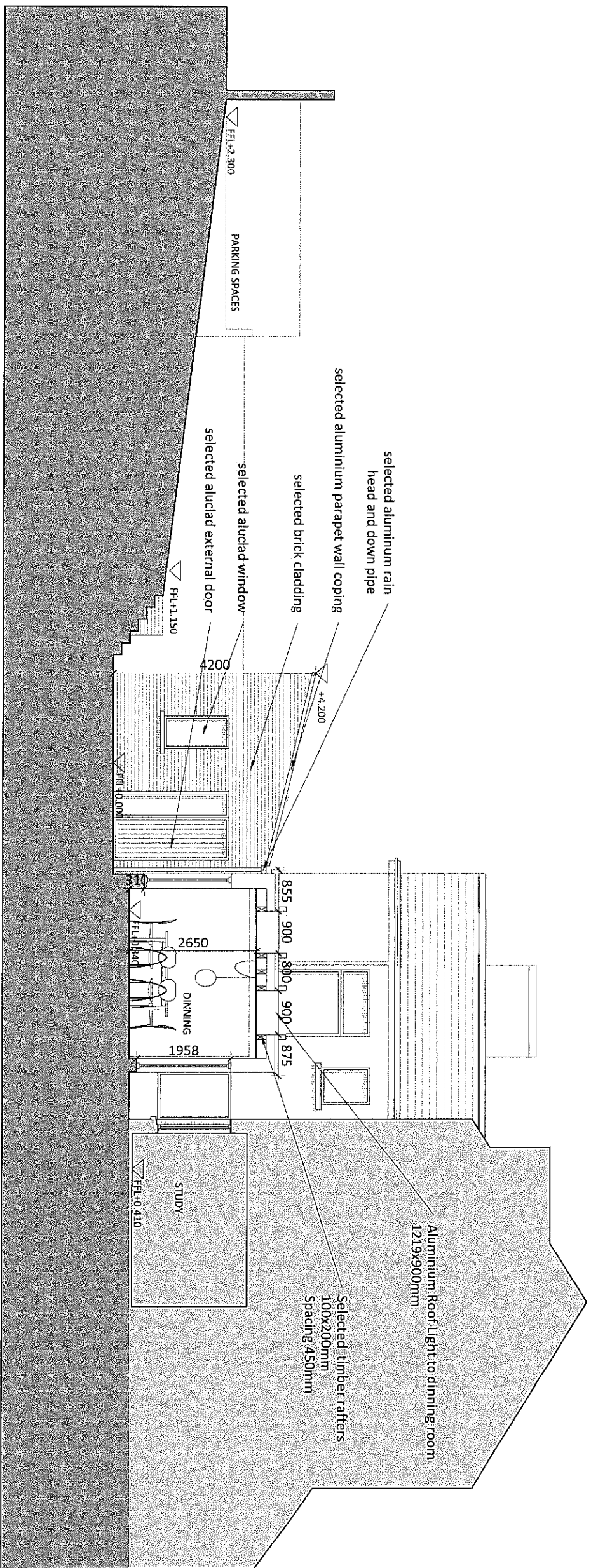


North Elevation
1:50

Proposed North Elevation - Scale 1:50
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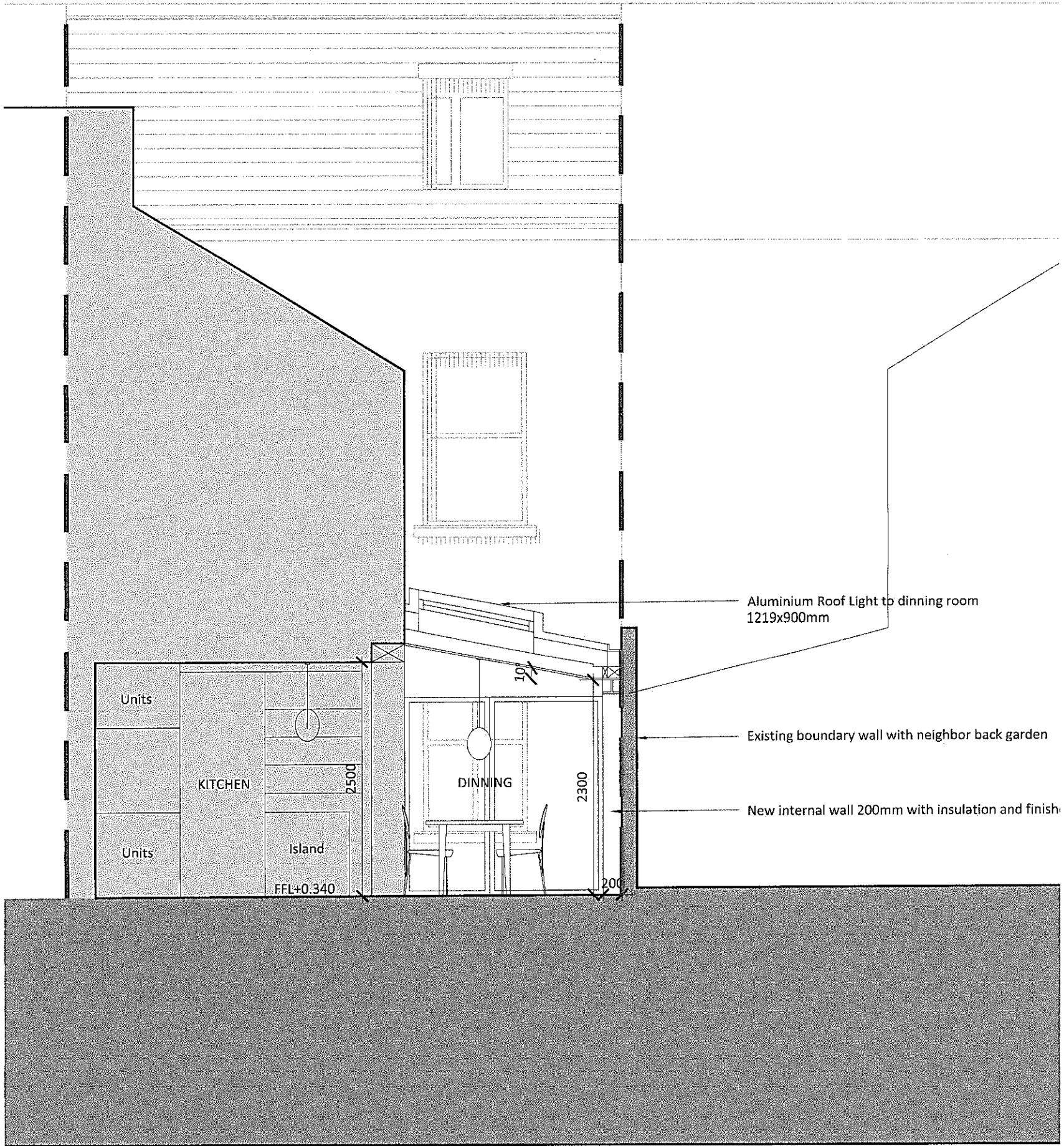
Proposed Section AA- Scale:1:100
 No.3 Roseneath Villas
 Military Road - St Lukes
 17.05.2019
 Net Proposed Kitchen Extension : 20.8m²

Existing Structure

Comhairle Cathracha Chorcaí
 Cork City Council
 21 MAY 2019
 Strategic Planning & Economic
 Development Directorate

SITE BOUNDARY

SITE BOUNDARY



SECTION BB
1:50

Proposed Section BB- Scale 1:50
No.3 Roseneath Villas
Military Road - St Lukes
17.05.2019
Net Proposed Kitchen Extension : 20.8m²

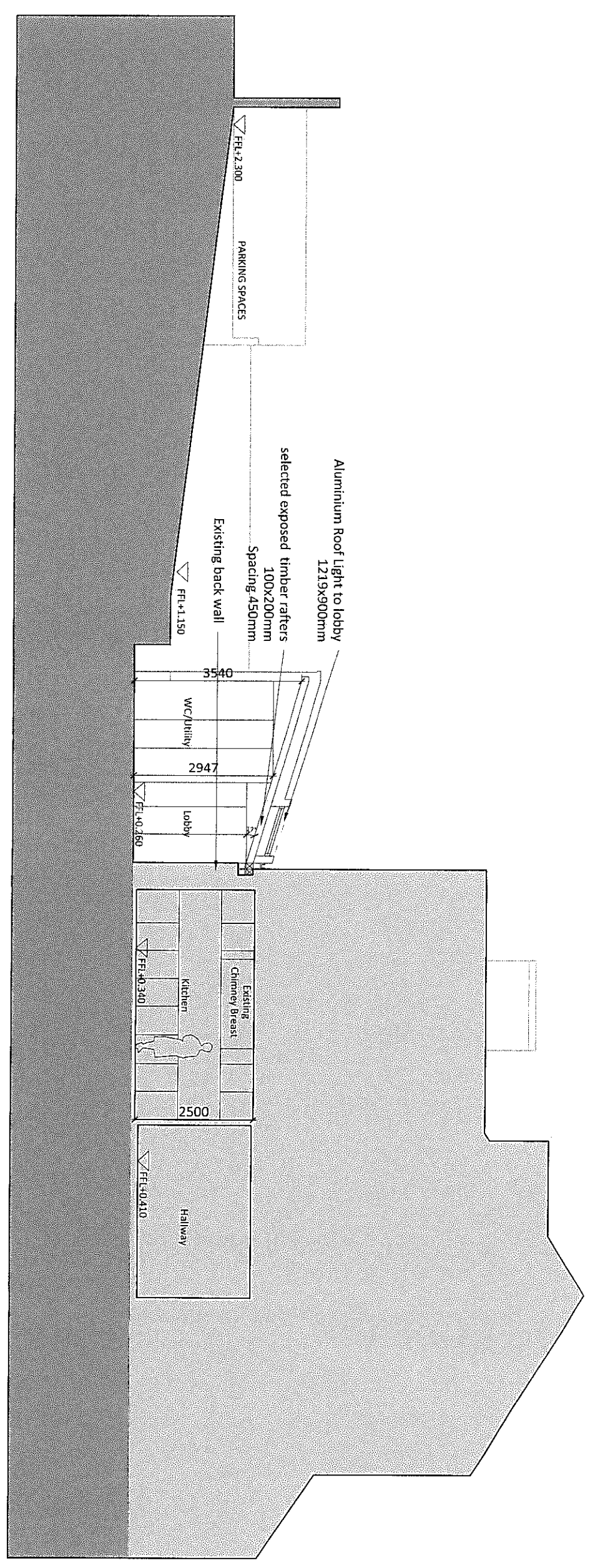
Existing Structure

Composite Cadastre Drawing
 Civil City Council
 21 MAY 2019
 Strategic Planning & Economic
 Development Directorate

Proposed Section CC - Scale 1:100
 No. 3 Roseneath Villas
 Military Road - St Lukes
 17.05.2019
 Net Proposed Kitchen Extension : 20.8m²

Existing Structure

SECTION CC
 1:100



Cork City Council
 Strategic Planning & Economic
 Development Directorate
 21 MAY 2019